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## Foreword

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## **Foreword:**

The *North Carolina Banking Institute* (“NCBI”) celebrates the publication of Volume 25 and the twenty-fifth annual North Carolina Banking Institute continuing legal education (“CLE”) program at which the journal is distributed each year. With the current global challenges in mind, many of our articles and notes relate to the ongoing COVID-19 pandemic and its impact on various aspects of the banking and finance sector.

This year’s journal features articles offering insight and guidance from subject matter experts into both long-simmering and newly emerging issues facing the financial services industry. In an article covering the American banking system and statutory framework from its early origins until today, Mark B. Greenlee provides a historical review of the differentiation and convergence in the regulation of depository institution holding companies. Mr. Greenlee is a Vice President and Counsel at the Federal Reserve Bank of Cleveland.

Volume 25 features an article by Todd H. Eveson examining the development of the Federal Reserve’s emergency lending powers under section 13(3) of the Federal Reserve Act and the role these powers play in the government responses to contemporary economic crises. Mr. Eveson’s article compares and contrasts the use of section 13(3) powers in response to the 2008 Financial Crisis and the economic fallout from the ongoing COVID-19 pandemic. Mr. Eveson is a partner at Wyrick Robbins Pontin & Yates LLP in Raleigh, North Carolina.

Additionally, this volume includes a timely article covering new case law arising from the recent bankruptcies of several energy producers across the country. This article—co-authored by John J. Kane, Gordon B. Russell, S. Kyle Woodward, and Kathleen Thompson—deals specifically with the treatment of midstream gathering agreements in bankruptcy court and the risks posed to the reserved-based lenders who finance oil and gas exploration and production companies. Messrs. Kane, Russell, Woodward and Ms. Thompson are attorneys with Kane Russell Coleman Logan PC in Dallas, Texas, and have considerable experience with bankruptcy and restructuring work in the energy space—including lender representation in one of the cases covered in the article.

We are very proud to publish thirteen notes written by our staff members as part of Volume 25. Two student notes deal squarely with programs initiated by the Coronavirus, Aid, Relief, and Economic Security Act (the “CARES Act”). Adhitya Mahesh’s note explores the Paycheck Protection Program and the potential lender

liability suits banks may face as a result of their participation. Nickolas J. Harrelson's note examines the mortgage forbearance provisions of the CARES Act, their effect on mortgage servicers, and the special risks non-bank mortgage servicers face as a result.

Our student notes include analyses of developments in banking and financial institution regulation, as well as developments impacting the regulators themselves. Christopher E. Rhodes Jr.'s note offers insights into the fundamental principles of bank merger review. Briana L. Johnson's note examines the development of financial institution stress testing, its role in American prudential financial regulation, and the stress tests carried out during the COVID-19 pandemic. Jordan A Koonts' note covers the effects of *Madden v. Midland Funding, LLC* on non-bank lenders, the response from the Office of the Comptroller of the Currency, and the impact on state consumer protection laws. Jackson Freeman's note explores the legal challenge to the structure of the Consumer Financial Protection Bureau in *Seila Law LLC v. CFPB*, the impact on the similarly structured Federal Housing Finance Authority, and the future roles of the two federal regulators.

Other student notes explore recent developments with significant consumer protection implications. Anna-Nicole Cooke's note takes a look at the shift to an increasingly digital financial services industry, its acceleration by the COVID-19 pandemic, and the implications to security of valuable financial data. Kevin Goldman's note explores the updated Community Reinvestment Act regulations adopted by the Office of the Comptroller of the Currency, their effect, and the Federal Deposit Insurance Corporation's hesitance to adopt comparable updates.

Several student notes examine the impact of developments in financial markets, emerging businesses, economics, and politics on the banking and finance industries. Emily Cooke's note explores the impact of the COVID-19 pandemic on collateralized loan obligations ("CLOs") and analyzes the long-term impact on CLOs and leveraged lending. Evan Harrell's note covers the rapid expansion of online sports betting, barriers to bank participation imposed by anti-money laundering laws, and best practices for financial institutions. Elizabeth Peters' note covers the Hong Kong Autonomy Act, developments in U.S.-China relations, and their impact on the operations of American financial institutions in China. Shayshari Potter's note explores the impact of COVID-19 on non-government backed, conventional mortgages and the need for independent bank action to provide mortgage forbearance to

borrowers. Lastly, Jonah Hall's note examines the Small Business Reorganization Act's revisions to the Bankruptcy Code, the benefits to debtors, and substantial drawbacks for creditors.

The journal is distributed at the annual University of North Carolina School of Law Banking Institute, held March 18–19, 2021. This year's version is virtual. We hope to return to Charlotte for an in-person Banking Institute in 2022. In whatever format the program is held, the Banking Institute is one of the nation's premier programs for banking attorneys and industry professionals. The Banking Institute is sponsored by the Center for Banking and Finance at the University of North Carolina School of Law ("Center"). Featured speakers at this year's Institute include Ellen Fitzsimmons, Chief Legal Officer, Head of Enterprise Diversity and Human Resources at Truist Financial Corporation; Tom Barkin, President and Chief Executive Officer, Federal Reserve Bank of Richmond; and Peter Skillern, Executive Director, Reinvestment Partners. Panels will address the long-term effects of COVID-19 on bank health, the current state of the LIBOR transition, the business imperative of diversity and inclusion, and bank partnerships with fintech firms.

We are saddened that this is the second year in a row that public health conditions have prevented us from gathering for this event in person. Our journal students miss out on a valuable networking opportunity. To showcase our students this year, they will be introducing speakers and panels and will conduct a session where each editor-staff member pair will talk about each staff member's journal note.

At this year's Institute we will present Joseph A. Smith, Jr., with the Center for Banking and Finance Leadership Award. In the Center's twenty-year history, Joe is only the seventh person to receive this honor. Joe has had a distinguished career in the banking industry, including in private practice in New York, D.C., and Raleigh. He served as the general counsel of Centura Banks and as the North Carolina Commissioner of Banks from 2002 to 2012. While Commissioner, Joe served a term as Chairman of the Conference of State Bank Supervisors and was a founding member of Regulatory Registry LLC, which is the owner and operator of the Nationwide Mortgage Licensing System. From 2012 to 2018, Joe served as monitor of consent judgments between the U.S. government and forty-nine states with eight of the country's largest mortgage servicers. He and his monitoring team validated the granting of over \$23 billion in credit relief by the servicers to over 675,000 distressed borrowers. In a separate settlement between JPMorgan Chase and the U.S. Department of Justice, Joe oversaw over \$4 billion of additional credited relief to over 168,000

borrowers. Joe recently retired from Poyner Spruill LLP and now serves as a Senior Fellow of the Global Financial Markets Center at Duke Law School.

The annual Banking Institute was preceded this year by two short programs we called a Prelude to the Banking Institute. The first program was on cannabis and hemp banking and coordinated by Travis Nelson of Holland & Knight LLP. The second program, coordinated by Erin Fonte of Hunton Andrews Kurth LLP, focused on eNotes, eMortgages, and e-closings. These programs attracted sizable audiences and were delivered for free as part of the build-up to the Banking Institute in March.

The ABCs of Banking Law, for those interested in a short course overview of banking law fundamentals, was held on March 2, 2021. Many thanks to our continuing cast of faculty that joined Lissa Broome in this program. They include Scott Cammarn, Cadwalader, Wickersham & Taft LLP; Gene Katz, Wells Fargo & Company (retired); Cliff Stanford, Alston & Bird LLP; Karol Sparks, Barack Ferrazzano Kirschbaum & Nagelberg LLP; John Stoker; and Phillip Wertz, Bank of America Corp.

The NCBI participated in several programs throughout the academic year to assist students' professional networking efforts. The NCBI editors and staff would like to thank the attorneys who participated in the NCBI's twelfth Career Trek. This year's Career Trek was hosted virtually by Womble Bond Dickinson and Truist Financial Corporation and orchestrated by Scott Schaaf and David Bloom. The virtual format allowed us to open the program to more students who benefited from learning about different practice areas from both the private practice and in-house perspective. Journal alums also joined NCBI students to discuss their own career paths.

The Center was established in July 2000 to play a leadership role in the continual evolution of the financial services industry. While the annual Banking Institute is the Center's signature program, the Center is also involved with a number of other programs designed to provide high quality education to the banking and finance industry, including the Dan K. Moore Program in Ethics (held virtually on October 16, 2020) and several segments of the Festival of Legal Learning, February 2–5, 2021. Both of these programs were in conjunction with the UNC School of Law Office of Continuing Legal Education.

A distinguished Board of Advisors, consisting of attorneys and industry professionals, guides the activities of the NCBI and the Center. The financial support provided by the Center's Board of Advisors has been crucial in permitting the Center to undertake its many activities. The financial support is manifested in annual sponsorships of

the Banking Institute CLE program and a campaign establishing an endowment to support the Center's activities spearheaded by a transformative gift from George and Susan Beischer. In honor of the Beischer's generosity, the annual major address at the Banking Institute is named in their memory. This year Federal Reserve Bank of Richmond President Tom Barkin will deliver the Beischer Address in a new format—as a fireside chat with the NCBI's editor-in-chief.

Funds collected from sponsors have endowed a scholarship for a journal student and a research fund that supports the Center. In addition, since the 2013–2014 academic year, the board has provided a second scholarship for a journal student, in an equivalent amount to the endowed scholarship, out of current sponsorship funds. The board began making an additional commitment to scholarships in honor of the twentieth anniversary of the NCBI, with the remaining NCBI editors each receiving a scholarship of at least \$3,000 for their third year of law school. Sponsor funds have also been used to provide support for students working in the public interest and summer study abroad in areas related to banking and finance.

The Center and its board welcome your suggestions as to how the Center may better serve the needs of the industry. Please contact Lissa Broome ([lbroomer@email.unc.edu](mailto:lbroomer@email.unc.edu)) to share your ideas or to become involved in the Center's activities. To learn more about the Center's programs and activities, please visit the Center's website at <https://law.unc.edu/academics/centers-and-programs/center-for-banking-and-finance/>. To view the PDF versions of the Notes and Articles provided herein or past volume published by the NCBI, please visit, <https://scholarship.law.unc.edu/ncbi/>. If you have any suggestions about topics that the students of the NCBI should write about in the future or you have an interest in having an article published in Volume 26, please email your topic ideas or article to [ncbank@unc.edu](mailto:ncbank@unc.edu).

Please join us in celebrating twenty-five years of the NCBI and twenty years of the Center for Banking and Finance. We look forward to providing many more years of service to banking industry professionals.

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*Volume 25*

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